

1 Peter E. Soskin (SBN 280347)  
peter.soskin@klgates.com  
2 Erik J. Halverson (SBN 333492)  
Erik.Halverson@klgates.com  
3 **K&L GATES LLP**  
4 Four Embarcadero Center, Suite 1200  
San Francisco, CA 94111  
5 Tel: 415 882 8200

6 Benjamin E. Weed (IL SBN 6294052)  
benjamin.weed@klgates.com  
7 Philip A. Kunz (IL SBN 6297002)  
philip.kunz@klgates.com  
8 Gina A. Johnson (IL SBN 6320853)  
gina.johnson@klgates.com  
9 James A. Shimota (IL SBN 6270603)  
james.shimota@klgates.com  
10 Amanda C. Maxfield (IL SBN 6336337)  
amanda.maxfield@klgates.com  
11 **K&L GATES LLP**  
12 70 W. Madison Street, Suite 3100  
13 Chicago, IL 60602  
14 Tel: 312.372.1121

15 Darlene F. Ghavimi (TX SBN 24072114)  
darlene.ghavimi@klgates.com  
16 **K&L GATES LLP**  
17 2801 Via Fortuna, Suite #350  
Austin, TX 78746  
18 Tel.: (512) 482-6919

19 *Attorneys for Plaintiff Koss Corporation*

20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA

22 KOSS CORPORATION,  
23 Plaintiff,  
24 v.  
25 PLANTRONICS INC., et al.,  
26 Defendants.

Case No. 21-cv-03854-JST

**KOSS'S OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS  
UNDER FED. R. CIV. P. 12(b)(6)**

**Honorable Judge Jon S. Tigar**

**TABLE OF CONTENTS**

<b>I.</b>	<b>Introduction .....</b>	<b>1</b>
<b>II.</b>	<b>Legal Standard .....</b>	<b>3</b>
<b>III.</b>	<b>The Patents-in-Suit Are Patent Eligible.....</b>	<b>4</b>
<b>A.</b>	<b>Alice Step One—The Claims of the Patents-in-Suit are Not Directed to an Abstract Idea .....</b>	<b>5</b>
<b>1.</b>	<b>Claim 1 of the ’325 Patent is Not Directed to an Abstract Idea .....</b>	<b>7</b>
<b>2.</b>	<b>Claim 1 of the ’025 Patent is Not Directed to an Abstract Idea .....</b>	<b>8</b>
<b>3.</b>	<b>Claim 1 of the ’155 Patent is Not Directed to an Abstract Idea .....</b>	<b>10</b>
<b>4.</b>	<b>Claim 1 of the ’934 Patent is Not Directed to an Abstract Idea .....</b>	<b>11</b>
<b>5.</b>	<b>Claim 1 of the ’498 Patent is Not Directed to an Abstract Idea .....</b>	<b>12</b>
<b>6.</b>	<b>Claim 1 of the ’852 Patent is Not Directed to an Abstract Idea .....</b>	<b>13</b>
<b>7.</b>	<b>Defendants’ Failure as it Relates to Any Dependent Claim .....</b>	<b>14</b>
<b>B.</b>	<b>Patent Eligible Subject Matter in Cases with Comparable Claims.....</b>	<b>15</b>
<b>C.</b>	<b>Alice Step Two—The Claims of the Patents-in-Suit Amount to Significantly More Than a Patent on an Ineligible Concept. ....</b>	<b>16</b>
<b>D.</b>	<b>Defendants Fail to Consider the Claims in their Totality Rendering the Cited Authority Inapposite.....</b>	<b>19</b>
<b>IV.</b>	<b>Conclusion.....</b>	<b>22</b>

**TABLE OF AUTHORITIES****Page(s)****Cases**

<i>Affinity Labs of Tex., LLC v. Amazon.com Inc.</i> , 838 F.3d 1266 (Fed. Cir. 2016).....	20, 21
<i>Alice Corp. v. CLS Bank Int’l</i> , 573 U.S. 208 (2014).....	1, 2, 3, 4, 5, 6, 7, 14, 16, 17, 18, 20, 21
<i>Align Tech., Inc v. 3Shape A/S</i> , No. 17-1647-LPS, 2020 WL 5979353 (D. Del. Oct. 8, 2020).....	18
<i>Ancora Techs., Inc. v. HTC Am., Inc.</i> , 908 F.3d 1343 (Fed. Cir. 2018).....	2, 16
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 664 (2009).....	4
<i>Avago Techs. Gen. IP (Singapore) PTE Ltd v. Asustek Comput. Inc.</i> , No. 15-cv-04525-EMC, 2016 WL 1623920 (N.D. Cal. Apr. 25, 2016).....	15
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544, 555 (2007).....	4
<i>Berkheimer v. HP Inc.</i> , 881 F.3d 1360 (Fed. Cir. 2018).....	2, 3, 17, 18
<i>BSG Tech LLC v. BuySeasons, Inc.</i> , 899 F.3d 1281 (Fed. Cir. 2018).....	5
<i>Cellspin Soft, Inc. v. Fitbit, Inc.</i> , 927 F.3d 1306 (Fed. Cir. 2019).....	2, 4, 17, 18
<i>Chamberlain Grp., Inc. v. Techtronic Indus. Co.</i> , 935 F.3d 1341 (Fed. Cir. 2019).....	19, 20
<i>ChargePoint, Inc. v. SemaConnect, Inc.</i> , 920 F.3d 759 (Fed. Cir. 2019).....	20
<i>Contour IP Holding, LLC v. GoPro, Inc.</i> , No. 3:17-cv-04738-WHO, 2021 WL 4148651 (N.D. Cal. Sept. 13, 2021).....	19
<i>Data Engine Techs. LLC v. Google LLC</i> , 906 F.3d 999 (Fed. Cir. 2018).....	2, 4
<i>Enfish, LLC v. Microsoft Corp.</i> , 822 F.3d 1327 (Fed. Cir. 2016).....	2, 7, 14, 16

1	<i>Fortinet, Inc. v. Forescout Techs., Inc.</i> ,	
2	No. 20-cv-03343-EMC, 2020 WL 6415321 (N.D. Cal. Nov. 2, 2020) .....	5, 17
3	<i>Hal Roach Studios, Inc. v. Richard Feiner &amp; Co., Inc.</i> ,	
4	896 F.2d 1542 (9th Cir. 1989).....	4
5	<i>Illumina, Inc. v. Ariosa Diagnostics, Inc.</i> ,	
6	967 F.3d 1319 (Fed. Cir. 2020).....	4
7	<i>Innovative Global Sys., LLC v. Keep Truckin, Inc.</i> ,	
8	No. 19-641 (MN), 2020 WL 1443201 (D. Del. Mar. 24, 2020) .....	16
9	<i>Internet Patents Corp. v. Active Network, Inc.</i> ,	
10	790 F.3d 1343 (Fed. Cir. 2015).....	6
11	<i>Levitt v. Yelp! Inc.</i> ,	
12	765 F.3d 1123 (9th Cir. 2014).....	4
13	<i>M2M Sols. LLC v. Sierra Wireless America, Inc.</i> ,	
14	No. 14-1102-RGA, 2020 WL 7767639 (D. Del. Dec. 4, 2020).....	16
15	<i>Mayo Collaborative Servs. v. Prometheus Labs., Inc.</i> ,	
16	566 U.S. 66 (2012).....	5
17	<i>McRO, Inc. v. Bandai Namco Games America Inc.</i> ,	
18	837 F.3d 1299 (Fed. Cir. 2016).....	2, 6
19	<i>Microsoft Corp. v. I4I Ltd. P'ship</i> ,	
20	564 U.S. 91 (2011).....	4
21	<i>Olympus Corp. v. Maxell, Ltd.</i> ,	
22	2018 WL 5962471, * 6 (D. Del. Nov. 14, 2018) .....	15, 16
23	<i>Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.</i> ,	
24	827 F.3d 1042 (2016).....	7
25	<i>RICPI Communications LLC v. JPS Interoperability Sols., Inc.</i> ,	
26	No. 18-1507-RGA, 2019 WL 1244077 (D. Del. Mar. 18, 2019) .....	16
27	<i>Sensormatic Elecs., LLC v. Wyze Labs, Inc.</i>	
28	No. 2020-2320, 2021 WL 2944838 (Fed. Cir. Jul. 14, 2021).....	21, 22
	<i>Thales Visionix Inc. v. United States</i> ,	
	850 F.3d 1343 (Fed. Cir. 2017).....	2, 16
	<i>Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC</i> ,	
	874 F.3d 1329 (Fed. Cir. 2017).....	3, 17
	<i>Xoran Techs., LLC v. Planmeca USA, Inc.</i> ,	
	No. 17 CV 7131, 2018 WL 2320944 (N.D. Ill. May 22, 2018).....	15, 16

<i>XY, LLC v. Trans Ova Genetics, LC</i> , No. 2019-1789, 2020 WL 4378028 (Fed. Cir. July 31, 2020).....	2
---	---

## Statutes

35 U.S.C. § 101..... 4, 5, 16, 19

Federal Rule of Civil Procedure 8(a)(2)..... 3

Federal Rule of Civil Procedure 12(b)(6) ..... 1, 4, 22

1 Plaintiff Koss Corporation (“Koss” or “Plaintiff”) opposes the Rule 12(b)(6) Motion to  
 2 Dismiss (“Motion”) filed by Defendants Plantronics, Inc. and Polycom, Inc. (collectively  
 3 “Defendants”). ECF No. 80.

4 **I. INTRODUCTION**

5 Koss filed this case on July 22, 2020, alleging that Defendants’ willful, direct, indirect, and  
 6 contributory infringement of U.S. Patent Nos. 10,206,025 (“the ’025 Patent”), 10,368,155 (“the  
 7 ’155 Patent”), 10,469,934 (“the ’934 Patent”), and 10,506,325 (“the ’325 Patent”) and later,  
 8 amended its Complaint to add U.S. Patent Nos. 10,757,498 (“the ’498 patent”) and 10,848,852  
 9 (“the ’852 patent”) (collectively the “Patents-in-Suit”) warranted injunctive and monetary relief.  
 10 ECF No. 1 (Complaint) and ECF No. 71 (First Amended Complaint, (“FAC”)). The Patents-in-  
 11 Suit in this case are related, share a specification, and claim priority to the same provisional patent  
 12 application. All of the Patents-in-Suit were prosecuted with the benefit of the Supreme Court’s  
 13 guidance in *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208 (2014); indeed, all six Patents-in-Suit have  
 14 filing dates in 2018, 2019, and 2020 and corresponding, later issue dates. When these patents  
 15 issued, the *Alice*-based framework for assessing patent eligibility was well-understood, both in the  
 16 Courts and at the United States Patent and Trademark Office (“USPTO”). Unlike the patents in all  
 17 but one of Defendants’ cited cases, the Patents-in-Suit are 10,###,### series patents, issued with  
 18 the benefit of large swaths of Court and USPTO-issued guidance on patent subject matter  
 19 eligibility. The USPTO was aware of this guidance and properly issued the Patents-in-Suit.  
 20 Defendants’ Motion makes no mention of any intervening change in the law since the patents’  
 21 prosecution or issuance that would warrant granting Defendants’ requested relief of invalidating  
 22 Koss’s intellectual property rights, and Defendants’ Motion certainly does not warrant ignoring the  
 23 *presumption of validity* the Patents-in-Suit enjoy as issued United States patents.

24 Fundamentally, Koss’ Patents-in-Suit are generally directed to wireless headphones with  
 25 many physical and structural claim elements. These specific hardware components result in  
 26 claimed hardware devices and systems that offer significant improvements over the then-existing  
 27 devices. The Patents-in-Suit are quintessential patentable subject matter under both steps of the  
 28 two-step test set forth by the Supreme Court in *Alice*, 573 U.S. The claimed apparatuses in the ’155

1 Patent, the '934 Patent, the '325 Patent, and the '498 Patent as well as the systems in the '025 Patent  
 2 and the '852 Patent, are all explicitly directed to physical, tangible headphone assemblies and  
 3 systems that include a mobile computer device with a graphical display screen—devices that are  
 4 facially and plainly not abstract. This Court need not proceed further than *Alice* Step One in  
 5 dismissing Defendants' Motion.

6 In an effort to prematurely dispose of this case, Defendants' arguments would have the  
 7 Court ignore the core patent-eligible aspects of the inventions; to make this request, Defendants  
 8 have erroneously and disingenuously represented to this Court that the Patents-in-Suit are directed  
 9 to generic "wireless communication over a network." ECF No. 80 (Motion) at 1. In an effort to  
 10 avoid a true analysis under *Alice* step one, Defendants simply allege that because the Patents-in-  
 11 Suit *relate*, in part, to wireless communication, the claims as a whole are not patent-eligible.  
 12 However, this is a gross mischaracterization of the claims and importantly, numerous binding  
 13 decisions from the Supreme Court and Federal Circuit—decisions uncited and undistinguished in  
 14 Defendants' brief—flatly reject this notion. *See, e.g., Enfish, LLC v. Microsoft Corp.*, 822 F.3d  
 15 1327 (Fed. Cir. 2016); *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018); *Ancora Techs., Inc.*  
 16 *v. HTC Am., Inc.*, 908 F.3d 1343 (Fed. Cir. 2018); *McRO, Inc. v. Bandai Namco Games America*  
 17 *Inc.*, 837 F.3d 1299 (Fed. Cir. 2016); *Thales Visionix Inc. v. United States*, 850 F.3d 1343 (Fed.  
 18 Cir. 2017); *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306 (Fed. Cir. 2019); *XY, LLC v. Trans Ova*  
 19 *Genetics, LC*, No. 2019-1789, 2020 WL 4378028 (Fed. Cir. July 31, 2020); *Data Engine Techs.*  
 20 *LLC v. Google LLC*, 906 F.3d 999, 1007 (Fed. Cir. 2018).

21 In failing to acknowledge these key decisions, Defendants ignore the relevant inquiry under  
 22 *Alice* Step One: whether the claims, **as a whole**, are directed to an abstract idea (i.e., a method of  
 23 wireless communication over a network as Defendants allege) versus eligible subject matter. This  
 24 Court's analysis can end there. *See, e.g., XY*, 2020 WL 4378028, at \*6 ("Having concluded that  
 25 the asserted claims [] are not directed to an abstract idea at *Alice* step one, we need not reach *Alice*  
 26 step two.") (citing *Data Engine*, 906 F.3d at 1007).

27 Even still, under *Alice* Step Two, the claims of the Patents-in-Suit contain elements arranged  
 28 in combination that amount to significantly more than a patent on the "ineligible concept itself."

1 *Alice*, 573 U.S. at 217–18. Defendants’ Motion misrepresents the patented inventions and the  
 2 improvements contained within the Patents-in-Suit. Moreover, Defendants repeatedly allege that  
 3 the Patents-in-Suit claim “generic components” and that were “known” in the prior art. ECF No.  
 4 80 (Motion) at 2–3, 5–22, 25. *See e.g., id.* at 21–22 (“The patent makes no claim that Koss invented  
 5 Bluetooth, nor does it suggest that its use, at that level of generality, were unknown in the art as of  
 6 the priority date of the ’852 patent.”) (internal citations omitted). However, the Motion is silent  
 7 with regard to any reason why the Court should conclude, in the face of settled law, that the claimed  
 8 inventions of the Patents-in-Suit are conventional. *See Berkheimer*, 881 F.3d at 1368 (“The  
 9 question of whether a claim element or combination of elements is well-understood, routine and  
 10 conventional to a skilled artisan in the relevant field is a question of fact”), *see, e.g.*, ECF No. 71  
 11 (FAC) at ¶64 (“The written description of the ’025 Patent describes . . . how the non-conventional  
 12 and non-generic combination of claim limitations is patentably distinct from and improved upon  
 13 what may have been considered conventional or generic in the art at the time of the invention.”);  
 14 *see also* ECF No. 71 (FAC) at ¶115 (“The ’498 Patent describes and claims a system-on-chip that  
 15 mutes audio content streamed to the headphone in response to detecting an incoming wireless  
 16 communication to the headphone, a specific improvement to the art.”).

17 This matter is well-settled, and Defendants’ thinly veiled obviousness arguments should be  
 18 seen for what they are: irrelevant to the question of patent eligibility. *Two-Way Media Ltd. v.*  
 19 *Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339–40 (Fed. Cir. 2017) (“as the court correctly  
 20 concluded that the material was relevant to a novelty and obviousness analysis, and not whether  
 21 the claims were directed to eligible subject matter”).

22 Defendants should not be permitted to add a new argument on this unaddressed factual  
 23 prong of the second step of *Alice*. Thus, under both steps, denial of Defendants’ Motion is  
 24 appropriate.

## 25 **II. LEGAL STANDARD**

26 Federal Rule of Civil Procedure 8(a)(2) requires the complaint include “a short and plain  
 27 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). To  
 28 overcome a motion to dismiss, a “plaintiff’s factual allegations in the complaint must suggest that



1 the claim has at least a plausible chance of success.” *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th  
 2 Cir. 2014); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*,  
 3 556 U.S. 662, 664 (2009). In resolving a 12(b)(6) motion, “the allegations of the non-moving party  
 4 must be accepted as true, while the allegations of the moving party which have been denied are  
 5 assumed to be false.” *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1550  
 6 (9th Cir. 1989).

7 Issued patents are presumed valid and the burden of establishing invalidity of a claim rests  
 8 on the party asserting invalidity by clear and convincing evidence. *Microsoft Corp. v. I4I Ltd.*  
 9 *P’ship*, 564 U.S. 91, 95 (2011). Patent eligibility can be determined on the pleadings when there  
 10 are no factual allegations that, when taken as true, prevent resolving the eligibility question as a  
 11 matter of law. *Data Engine*, 906 F.3d at 1007; *see also Cellspin*, 927 F.3d 1306 (vacating Rule  
 12 12(b)(6) dismissals where the complaint made plausible and “well-pleaded allegations” of  
 13 eligibility).

### 14 **III. THE PATENTS-IN-SUIT ARE PATENT ELIGIBLE**

15 An invention is patent eligible if it claims “any new and useful process, machine,  
 16 manufacture, or composition of matter, or any new and useful improvement thereof.” *Alice*, 573  
 17 U.S. at 216. It is undisputable that 35 U.S.C. § 101 “contains an important implicit exception:  
 18 Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Id.* (quoting *Ass’n for*  
 19 *Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). To distinguish claims  
 20 to patent-eligible applications of laws of nature, natural phenomena, or abstract ideas from claims  
 21 that impermissibly tie-up or preempt such laws and ideas, courts apply the two-part test set forth in  
 22 *Alice*. 573 U.S. at 217. First, a court examines whether the claims are “directed to” an abstract  
 23 idea. *Id.* “If—and only if—they are, then we proceed to the second inquiry, where we examine  
 24 whether the limitations of the claim apart from the [abstract idea], considered individually and as  
 25 an ordered combination, ‘transform the nature of the claim’ into a patent-eligible application.”  
 26 *Illumina, Inc. v. Ariosa Diagnostics, Inc.*, 967 F.3d 1319, 1325 (Fed. Cir. 2020) (citing *Alice*, 573  
 27 U.S. at 217).

1 In the event that step one results in a finding that the claims that are not directed towards a  
 2 law of nature, natural phenomena, or an abstract idea, the analysis stops as the claims are directed  
 3 towards patent-eligible subject matter. This is the case here.

4 Even if the Court is persuaded that the claims of the Patents-in-Suit are directed towards the  
 5 abstract idea as Defendants claim, the analysis of the content of the claims as a whole confirms that  
 6 the claims transform Defendants alleged “abstract idea” into patent-eligible claims. As such, the  
 7 claims of the Patents-in-Suit satisfy both steps of the *Alice* inquiry.

8 **A. Alice Step One—The Claims of the Patents-in-Suit are Not Directed to an**  
 9 **Abstract Idea**

10 Defendants erroneously argue that the claims of the Patents-in-Suit are “broadly directed to  
 11 . . . wireless communication over a network” and therefore are directed to a patent ineligible abstract  
 12 idea. ECF No. 80 (Motion) at 1. This is exactly what the Supreme Court expressly forbids. *Mayo*  
 13 *Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012) (Oversimplifying the claims  
 14 should be avoided because “all inventions at some level embody, use, or abstract ideas.”). To the  
 15 contrary, the claims of the Patents-in-Suit are directed to a tangible device (e.g., headphone  
 16 assemblies and systems), which include various hardware components to, among other things,  
 17 communicate and play sound to the user wearing the headphones. The claimed arrangement results  
 18 in functionally superior headphones compared to headphone assemblies in the prior art. *See BSG*  
 19 *Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1287 (Fed. Cir. 2018) (“For an application of an  
 20 abstract idea to satisfy step one, the claim’s focus must be something other than the abstract idea  
 21 itself.”). The fact that the claims are directed to tangible headphone assemblies for playing audio  
 22 information, and not to generic computer hardware, should end this Court’s inquiry.

23 A court may assess claims in view of the policy rationale for 35 U.S.C. § 101, i.e.,  
 24 preemption. *Fortinet, Inc. v. Forescout Techs., Inc.*, No. 20-cv-03343-EMC, 2020 WL 6415321,  
 25 \*4 (N.D. Cal. Nov. 2, 2020). In upholding eligibility, courts have “justified their decisions by  
 26 pointing to the lack of a preemption risk.” *Id.* The claims of the Patents-in-Suit certainly do not  
 27 preempt the entire concept of “communicating information wirelessly.” For example, claim 1 of  
 28 the ’325 Patent requires a curved hanger bar with a portion that rests upon an upper external

1 curvature of an ear. ECF No. 71-4 ('325 Patent) at cl. 1; *see also* ECF No. 71-1 ('025 Patent) at cl.  
 2 1 (“wherein the processor is for, upon activation of a user-control of the headphone assembly,  
 3 initiating transmission of a request to the remote, network-connected server.”); ECF No. 71-2 ('155  
 4 Patent) at cl. 1 (“a rechargeable battery for powering the wireless headphone assembly”); ECF No.  
 5 71-3 ('934 Patent) at cl. 1 (“wherein the headphone assembly is for receiving firmware upgrades  
 6 transmitted from the remote, network-connected server”); ECF No. 71-10 ('498 Patent) at cl. 1  
 7 (“wherein the first [system-on-chip] comprises: a [] wireless communication circuit[,] . . . processor  
 8 circuit[,] . . . wireless communication circuit[,] and a [] memory unit”); ECF No. 71-11 ('852  
 9 Patent) at cl. 1 (“wherein the mobile computer device comprises a screen that is configured to  
 10 display a graphical user interface through which a user of the wireless headphones selects an audio  
 11 control setting for the wireless headphone”). It is undisputable that there are various devices  
 12 capable of communicating information wirelessly that fall outside the scope of the claims of the  
 13 Patents-in-Suit. Defendants’ characterization of the patent claims in this way should be seen for  
 14 the farce it is, and the preemption analysis highlights the true nature of the patent claims (and the  
 15 falsity of Defendants’ arguments regarding the same).

16 To do as Defendants suggest—reduce the claims of the Patents-in-Suit to the abstract idea  
 17 of “communicating information wirelessly”—oversimplifies the claims and ignores the express  
 18 recitation of specific limitations or tangible elements in those claims (filed by Koss, a headphone  
 19 company) that specifically require headphones. *See also McRo*, 837 F.3d at 1313 (“We have  
 20 previously cautioned that courts must be careful to avoid oversimplifying the claims by looking at  
 21 them generally and failing to account for the specific requirements of the claims.”).

22 Defendants, by ignoring the vast majority of the claim limitations, have effectively asked  
 23 this Court to conduct speculative eligibility analysis against hypothetical, broadened claims,  
 24 without any legal basis for doing so. This over-simplification reduces the claims to an unfair  
 25 representation as to the focus of the claim as a whole, running afoul of how step one of *Alice* must  
 26 be analyzed. *See Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir.  
 27 2015) (At *Alice* step one, “the claims are considered in their entirety to ascertain whether their  
 28 character as a whole is directed to excluded subject matter.”). Courts have been clear, there is a

1 distinction between claims that are *directed* to excluded subject matter and claims that *involve*  
 2 excluded subject matter. *Enfish*, 822 F.3d at 1335; *see also Rapid Litig. Mgmt. Ltd. v. CellzDirect,*  
 3 *Inc.*, 827 F.3d 1042, 1050 (2016).

4 The Supreme Court has not established a definitive rule to determine what constitutes an  
 5 “abstract idea” sufficient to satisfy *Alice* step one; one way is to compare claims at issue to those  
 6 claims already found to be directed to an abstract idea in previous cases. *Enfish*, 822 F.3d at 1334.  
 7 However, the cases Defendants cite are distinguishable as the claims in those cases are far more  
 8 generic and lack the specific elements and hardware present here. Although the cases cited by the  
 9 Defendants generally include claims that disclose some sort of wireless communication, none  
 10 involve claims that require specific apparatuses or systems that comprising distinct, physical  
 11 components that together result in an improved apparatus or system. Thus, although the claims of  
 12 the Patents-in-Suit *involve* forms of “wireless communication” they are not *directed* to “wireless  
 13 communication.”

14 Quite to the contrary of the cases Defendants cite, the claims of the Patents-in-Suit are each  
 15 to specific headphone hardware.

16 1. Claim 1 of the '325 Patent is Not Directed to an Abstract Idea

17 Claim 1 of the '325 Patent recites:

18 1. **Headphones** comprising:

19 a pair of **first** and **second** wireless **earphones** to be worn simultaneously by a user,  
 20 wherein the first and second earphones are separate such that when the  
 21 headphones are worn by the user, **the first and second earphones are not**  
 22 **physically connected**, wherein each of the first and second earphones  
 23 comprises:

24 **a body portion;**

25 **an earbud** extending from the body portion that is inserted into an ear of the  
 26 user when worn by the user;

27 **a curved hanger bar** connected to the body portion, wherein the curved hanger  
 28 bar comprises a portion that rests upon an upper external curvature of an ear  
 of the user behind an upper portion of an auricle of the ear of the user;

**a wireless communication circuit** for receiving and transmitting wireless  
 signals;

**a processor circuit** connected to the wireless communication circuit;

at least one **acoustic transducer** for producing audible sound from the earbud;

**a microphone** for picking up utterances of a user of the headphones;

1           **an antenna** connected to the wireless communication circuit; and  
 2           **a rechargeable power source**; and  
 3           **a docking station** for holding at least the first wireless earphone, wherein the  
 4           docking station comprises a power cable for connecting to an external device  
 5           to power the docking station, and wherein the docking station is for charging at  
           least the first wireless earphone when the first wireless earphone is placed in  
           the docking station.

6           ECF No. 71-4 ('325 Patent) at cl. 1 (emphasis added). Claim 1 of the '325 Patent is directed towards  
 7           a specific apparatus, two headphones that are not physically connected, the headphones comprising  
 8           a body, a bud, a curved hanger bar, a microphone, and an antenna, among other discrete hardware  
 9           components that, collectively, provide for an improved headphone.

10           The claim language itself compels a conclusion of patent eligibility on its face because the  
 11           '325 Patent claims an apparatus (i.e., headphones; a pair of first and second wireless earphones)  
 12           with specific structural limitations (i.e., an earbud extending from the body portion of the earphone  
 13           that is inserted into an ear of the user and a curved hanger bar portion that rests upon an upper  
 14           external curvature of an ear of the user), as well as requires additional hardware components such  
 15           as an antenna, acoustic transducer, processor, rechargeable battery, microphone, docking station,  
 16           and a wireless communication circuit. For example, the specification of the '325 Patent states that  
 17           the hanger bar “allows the earphone to clip to, or hang on, the user’s ear” and this allows a user “to  
 18           position the earphone on the listener’s ear.” *Id.* at 4:4–17. Further, any headphone without a curved  
 19           hanger bar, as well as any headphone connected via wire, would not be preempted by this claim.  
 20           When claim 1 of the '325 Patent is viewed in its entirety, as it must be per controlling precedent, it  
 21           plainly covers a specific, non-abstract apparatus with specific limitations, not Defendants’ abstract  
 22           idea of “wireless communication over a network.”

## 23                       2.       Claim 1 of the '025 Patent is Not Directed to an Abstract Idea

24           Claim 1 of the '025 Patent recites:

25           1. A system comprising:  
 26           a mobile, **digital audio player** that stores digital audio content; and  
 27           a **headphone assembly**, separate from and in wireless communication with the  
           mobile digital audio player, wherein the headphone assembly comprises:  
 28           **first and second earphones**, wherein each of the first and second earphones  
           comprises an **acoustic transducer**;

1 an **antenna** for receiving wireless signals from the mobile, digital audio player  
 2 via one or more ad hoc wireless communication links;  
 3 a **wireless communication circuit** connected to the at least one antenna,  
 4 wherein the at least one wireless communication circuit is for receiving and  
 5 transmitting wireless signals to and from the headphone assembly;  
 6 a **processor**;  
 7 a **rechargeable battery** for powering the headphone assembly; and  
 8 a **microphone** for picking up utterances by a user of the headphone assembly;  
 9 and  
 10 a remote, network-connected **server** that is in wireless communication with the  
 11 mobile, digital audio player;  
 12 wherein the mobile, digital audio player is for transmitting digital audio content to  
 13 the headphone assembly via the one or more ad hoc wireless communication  
 14 links, such that **the digital audio content received by the headphone  
 15 assembly from the mobile, digital audio player is playable by the first and  
 16 second earphones**; and  
 17 wherein the processor is for, upon activation of a **usercontrol of the headphone  
 18 assembly**, initiating **transmission of a request** to the remote, network-  
 19 connected server.

20 ECF No. 71-1 ('025 Patent) at cl. 1 (emphasis added). Claim 1 of the '025 Patent is directed towards  
 21 a specific system, a digital audio player and a headphone assembly that are not physically  
 22 connected. The headphones of the assembly comprise two distinct earphones, a processor, and a  
 23 microphone, among other discrete hardware components that, collectively, provide for an improved  
 24 headphone assembly.

25 The claim language itself compels a conclusion of patent eligibility on its face because the  
 26 '025 Patent claims a specific system, comprising a device (i.e., a mobile, digital audio player that  
 27 stores digital audio content) and an apparatus (i.e., a headphone assembly; first and second  
 28 earphones), as well as requires additional hardware components, such as an antenna, acoustic  
 transducer, processor, a remote, network-connected server, rechargeable battery, a microphone, and  
 a user-control component. For example, the specification of the '025 Patent states “the earphone  
 may comprise a user control, such as button . . . that, when activated, causes the earphone to transmit  
 an electronic request . . . to the host server” that is in wireless communication with the mobile,  
 digital audio player. *Id.* at 14:51–57, *see also* 11:62-12:4 (describing transmission of ratings).  
 Further, any headphone without a microphone would clearly not be preempted by this claim. When

claim 1 of the '025 Patent is viewed in its entirety and considered as a whole, and not using the over-simplification Defendants employ, it is clear the claims are directed towards an apparatus with specific limitations, not the Defendants' abstract idea of "wireless communication over a network."

### 3. Claim 1 of the '155 Patent is Not Directed to an Abstract Idea

Claim 1 of the '155 Patent recites:

1. A wireless **headphone assembly** comprising:  
**first** and **second earphones**, wherein each of the first and second earphones comprises an **acoustic transducer**;  
 an **antenna** for receiving wireless signals;  
 a **wireless communication circuit** connected to the antenna, wherein the wireless communication circuit is for receiving and transmitting wireless signals to and from the wireless headphone assembly;  
 a **processor** in communication with the wireless communication circuit; and  
 a **rechargeable battery** for powering the wireless headphone assembly,  
 wherein the headphone assembly is configured, with the processor, to **transition automatically from playing digital audio** content received wirelessly by the headphone assembly via a **first wireless network** to playing digital audio content received wirelessly by the headphone assembly via a **second wireless network**.

ECF No. 71-2 ('155 Patent) at cl. 1 (emphasis added). Claim 1 of the '155 Patent is directed towards a specific apparatus, a headphone assembly (i.e., two earphones), the earphones comprising, an antenna, wireless communication circuit, and a rechargeable battery, among other discrete hardware components that, collectively, provide for an improved headphone assembly.

The claim language itself compels a conclusion of patent eligibility on its face because the '155 Patent claims an apparatus (i.e., a wireless headphone assembly comprising first and second earphones) and requires additional hardware components such as an acoustic transducer, an antenna connected to a wireless communication circuit, rechargeable battery, and a wireless communication circuit, and a specific processor that can automatically transition from playing digital audio content between two wireless networks. *Id.* at 2:3–6, Fig. 6. For example, when the earphone and the data source are "out of range" (i.e., "when the received signals degrade below the threshold minimum signal strength level"), both the earphone and the data source "may transition automatically to communicate over an infrastructure wireless network (such as a wireless LAN 15 (WLAN)) [] that



1 is in the range of both the earphone [] and the data source.” *Id.* at 5:9–16, Fig. 2B. Further, any  
 2 headphone that is not capable from transitioning to receive content via a first network to content  
 3 received via a second network would not be preempted by this claim. When claim 1 of the ’155  
 4 Patent is viewed in its entirety and considered as a whole, and not using the over-simplification  
 5 Defendants employ, it is clear the claims are directed towards an apparatus with specific limitations,  
 6 not the Defendants’ abstract idea of “wireless communication over a network.”

7                   4.       Claim 1 of the ’934 Patent is Not Directed to an Abstract Idea

8       Claim 1 of the ’934 Patent states:

9       1. A **headphone assembly** comprising:

10       **first** and **second earphones**, wherein each of the first and second earphones  
       comprises an **acoustic transducer**; and

11       an **antenna** for receiving wireless signals from a mobile, digital audio player via  
       one or more ad hoc wireless communication links;

12       a **wireless communication circuit** connected to the antenna, wherein the wireless  
       communication circuit is for receiving and transmitting wireless signals to and  
       from the headphone assembly;

13       a **processor**;

14       a **memory** for storing firmware that is executed by the processor;

15       a **rechargeable battery** for powering the headphone assembly; and

16       a **microphone** for picking up utterances by a user of the headphone assembly; and  
       wherein the headphone assembly is configured to **play**, by the first and second  
       earphones, **digital audio** content transmitted by the mobile, digital audio player  
       via the one or more ad hoc wireless communication links;

17       wherein the processor is configured to, upon activation of a **user-control of the**  
       **headphone assembly**, **initiate** transmission of a **request** to a remote, network-  
       connected server that is in wireless communication with the mobile, digital  
       audio player; and

18       wherein the headphone assembly is for **receiving firmware upgrades** transmitted  
       from the remote, network-connected server.

19       ECF No. 71-3 (’934 Patent) at cl. 1 (emphasis added). Claim 1 of the ’934 Patent is directed towards  
 20       a specific apparatus, a headphone assembly, (i.e., two earphones), the earphones comprising, an  
 21       antenna, wireless communication circuit, a rechargeable battery, and memory, among other discrete  
 22       hardware components that, collectively, provide for an improved headphone assembly.

23       The claim language itself compels a conclusion of patent eligibility on its face because the  
 24       ’934 Patent claims a specific apparatus (i.e., a headphone assembly comprising first and second  
 25



earphones), and requires additional hardware components such as an acoustic transducer, an antenna connected to a wireless communication circuit, processor, and memory for storing received firmware upgrades. For example, the specification states the “memory units . . . may store firmware that is executed by the processor unit [and e]xecution of the firmware by the processor unit [] may provide various functionality for the earphone.” *Id.* at 7:43–546. The specification describes numerous benefits to the user as a result of the execution of the firmware. *See Id.* at 9:14–28, 10:4–35, 10:49–54, 14:2–62, 15:24–34, 15:50–61. When claim 1 of the ’934 Patent is construed in its entirety and considered as a whole, it is clear that it is not broadly directed to “wireless communication over a network,” and utilizing generic components as Defendants have alleged.

5. Claim 1 of the ’498 Patent is Not Directed to an Abstract Idea

Claim 1 of the ’498 Patent states:

1. **Headphone** comprising:

a pair of **first** and **second wireless earphones** to be worn simultaneously by a user, wherein each of the first and second wireless earphones comprises at least one **acoustic transducer** for producing audible sound;

wherein the first wireless earphone comprises a **first system-on-chip (SOC)**, wherein the first SOC comprises:

a first **wireless communication circuit** for receiving and transmitting wireless signals;

a first **processor circuit** connected to the first wireless communication circuit; and

a first **memory unit** in communication with the first processor circuit for **storing firmware updates pushed** to the headphones **from a remote network server**;

wherein the first wireless communication circuit is for receiving audio content streamed wirelessly to the headphones from a first audio content source, such that the first and second wireless earphones play the audio content streamed wirelessly to the headphones; and

wherein the first processor circuit is configured to, in response to detecting an incoming wireless communication to the headphones;

mute the audio content streamed wirelessly to the headphones being played by the headphones; and

output audio of the incoming wireless communication circuit via the first and second wireless earphones.

ECF No. 71–10 (’498 Patent) at cl. 1 (emphasis added). Claim 1 of the ’498 Patent is directed towards a specific apparatuses, headphones (i.e., two earphones) comprising a specific piece of

1 hardware, a system-on-chip (SOC) that includes a wireless communication circuit, a processor  
2 circuit, and a memory unit.

3 The claim language alone compels a conclusion of patent eligibility on its face because the  
4 '498 Patent claims a specific apparatus (i.e., a pair of first and second wireless earphones) and  
5 requires additional hardware components such as an acoustic transducer, a first system-on-chip  
6 (SOC) comprising, a wireless communication circuit, a processor circuit, and a memory unit n  
7 communication with the first processor circuit for storing firmware updates pushed to the  
8 headphones from a remote network server. *Id.* at 6:30–55, Fig. 3. The specific limitations of  
9 discrete hardware components required by claim 1, collectively provide for an improved apparatus  
10 (i.e., headphones). For example, “the transceiver circuit 100 may be implemented as a single  
11 integrated circuit (IC), such as a system-on-chip (SOC), which is conducive to miniaturizing the  
12 components of the earphone 10, which is advantageous if the earphone 10 is to be relatively small  
13 in size, such as an in-ear earphone.” *Id.* at 6:45–50. When claim 1 of the '498 Patent is viewed in  
14 its entirety and considered as a whole, and not using the over-simplification Defendants employ, it  
15 is clear the claims are directed towards an apparatus with specific limitations, not the Defendants'  
16 abstract idea of “wireless communication over a network.”

#### 17 6. Claim 1 of the '852 Patent is Not Directed to an Abstract Idea

18 Claim 1 of the '852 Patent states:

19 1. A **system** comprising:

20 **wireless headphones** comprising **first** and **second earphones**; and

21 **a mobile computer device** that is in wireless communication with, and **untethered**  
22 **to**, the wireless headphones, wherein the mobile computer device is for  
23 wirelessly pairing with the wireless headphones such that the wireless  
24 headphones play audio content transmitted wirelessly to the wireless  
25 headphones from the mobile computer device, wherein the mobile computer  
device is for wirelessly pairing with the wireless headphones via an ad hoc  
wireless communication link between the mobile computer device and the  
wireless headphones, and wherein the ad hoc wireless communication link  
comprises a Bluetooth wireless communication link; and

26 wherein the mobile computer device comprises **a screen** that is configured to  
27 display **a graphical user interface** through which a user of the wireless  
28 headphones selects an **audio control setting for the wireless headphones** to  
be applied to the wireless headphones when the wireless headphones play the

1 audio content, and wherein the wireless headphones receive the audio control  
2 setting via a wireless **data communication link**.

3 ECF No. 71-11 ('852 Patent) at cl. 1 (emphasis added). Claim 1 of the '852 Patent is directed  
4 towards a specific system comprising a wireless headphone assembly (i.e., two earphones), and a  
5 mobile computing device having a graphical user interface that provides for audio control selection  
6 and application, among other discrete components that, collectively, provide for an improved  
7 headphone assembly.

8 The claim language itself compels a conclusion of patent eligibility on its face because the  
9 '852 Patent claims a system comprising a wireless headphone assembly (i.e., first and second  
10 earphones) and a mobile computing device with a graphical user interface thereon to allow the user  
11 to select an audio control setting for the wireless headphones. *Id.* at cl. 1, 2:17–21. This system,  
12 in particular the hardware of the mobile device, transforms this claim substantially from the alleged  
13 idea of wireless communication. The '852 Patent describes the solutions associated with providing  
14 such an interface for selecting of certain audio control settings. *Id.* at 13:40-52. This audio control  
15 setting selection and application to the headphones of the system allow for a more tunable user  
16 experience not present in the prior art. When claim 1 of the '852 Patent is viewed in its entirety  
17 and considered as a whole, and not using the over-simplification Defendants employ, it is clear the  
18 claims are directed towards a system, comprising headphones and a mobile computing device, not  
19 the Defendants' abstract idea of "wireless communication over a network."

20 It is clear that when the claims of the Patents-in-Suit are individually considered, in their  
21 entirety, their character as a whole is *not directed* to excluded subject matter, under step one. Not  
22 only do Defendants oversimplify the claims at issue, but they do the same with the *Alice* step one  
23 inquiry. Step one asks whether the claims are "**directed** to excluded subject matter," not whether  
24 the claims "**involve** a patent-ineligible concept." *Enfish*, 822 F.3d at 1335 (emphasis added).

#### 25 7. Defendants' Failure as it Relates to Any Dependent Claim

26 Defendants' Motion pays nothing more than passing lip service to the dependent claims of  
27 the Patents-in-Suit, all of which further limit the scope of the independent claims and add additional  
28 details. Defendant simply concludes the dependent claims "recite only trivial details" without any

support for such an argument. ECF No. 80 (Motion) at 20, 22. Defendants’ decision to characterize these additional limitations as “generic” does not make them so, and only underscores the impropriety of their argument. *Id.* at 12, 14, 16, 18, 24. These additional claims add specific audio control settings (ECF No. 71-11 at cls. 2-5), additional hardware and circuitry (ECF No. 71-2 at cls. 3, 12–14), power supply specifications, (ECF No. 71-10 at cls. 5, 8, 17, 18), as well as specific limitations as to the type of earphones ( ECF No. 71-1 at cls. 29, 39, 40, 53, 54, 55, 56; *see also e.g.*, ECF No. 71-3 at cls. 23, 33, 42, 48, 49, 50, 51). Defendants’ Motion does not address any of these additional elements, but each is another reason the claims are directed to patent eligible subject matter.

#### **B. Patent Eligible Subject Matter in Cases with Comparable Claims**

The claims of the Patents-in-Suit are similar to the claims in *Xoran Techs., LLC v. Planmeca USA, Inc.*, No. 17 CV 7131, 2018 WL 2320944 (N.D. Ill. May 22, 2018). *Xoran* considered claims directed to a scanner capable of taking x-ray images, a computer that generates 3D images, and a display. *Id.* at \*5. The court concluded that “the claims at issue are directed to more than just the idea of taking and displaying images, as claim 1 describes a scanner with **specific improvements**” and “**specific structural limitations.**” *Id.* \*5–6 (emphasis added). Finding the claims were not directed to an abstract idea the court, did not reach step two. *Id.*; *see also Avago Techs. Gen. IP (Singapore) PTE Ltd v. Asustek Comput. Inc.*, No. 15-cv-04525-EMC, 2016 WL 1623920, \*5 (N.D. Cal. Apr. 25, 2016) (“[T]he Federal Circuit has noted that an abstraction is ‘an idea, having no particular concrete or tangible form.’”) (quoting *Ulramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014)). This “abstraction” of *Avago* is far from the claims at hand where there is very much a specific, concrete, tangible form in which the claimed invention manifests itself.

In *Olympus Corp. v. Maxell, Ltd.*, the court considered claims directed to “‘a recording/play-back apparatus’ that uses a controller to monitor and control different modes of operation and power consumption of the apparatus.” No. 18-216 (MN), 2018 WL 5962471, \* 6 (D. Del. Nov. 14, 2018). The Court also noted that the patent “describes battery-consumption **problems with prior devices** and how the claimed controller **improves** those devices.” *Id.* (emphasis added). Ultimately the court held “the focus of claim 1 is an **improved** camera, **not a generic improvement** in battery (or

resource) conservation untethered from any technology [and] . . . is not directed to an ineligible abstract idea” and did not consider step two. *Id.* Similar to *Olympus* and *Xoran*, the Patents-in-Suit claim **improved** headphones and a headphone system, **not a generic improvement** in “wireless communication” as Defendants suggest, and there is no need for the court to reach step two.

Other courts have reached similar conclusions when considering claims disclosing apparatuses or devices with discrete physical components. *See, e.g., Innovative Global Sys., LLC v. Keep Truckin, Inc.*, No. 19-641 (MN), 2020 WL 1443201, \*6 (D. Del. Mar. 24, 2020) (finding patent eligible, claims directed to “an **onboard system that physically exists** and uses **tangible components** specifically adapted to continuously monitor certain data from the vehicle . . . and transmit that data to a **portable device.**”) (emphasis added); *RICPI Communications LLC v. JPS Interoperability Sols., Inc.*, No. 18-1507-RGA, 2019 WL 1244077, \*4 (D. Del. Mar. 18, 2019) (holding the claims eligible because “the computer network or internet connection serves as one claim element of a **concrete system** for two-way radio communication.”) (emphasis added); *M2M Sols. LLC v. Sierra Wireless America, Inc.*, No. 14-1102-RGA, 2020 WL 7767639, \*8 (D. Del. Dec. 4, 2020) (finding “the claims are directed to a **concrete** programmable communicator **device** having a processing module and an interface . . . [t]hese **tangible components** of the invention are **configured in a specific manner to improve the functioning of the device . . .**”) (emphasis added).

Consistent with the cases above, the claims of the Patent-in-Suit are not directed to an abstract idea under *Alice* step one. Because the *Alice* steps are sequential, if the court finds that “the claims are not directed to an abstract idea under step one,” then it need not proceed to step two. *Enfish*, 822 F.3d at 1339 (citing *Alice*, 573 U.S. at 217 ); *see also Ancora Techs.*, 908 F.3d at 1349. The first-stage filter (i.e., *Alice* step one) is a meaningful one and can end the § 101 inquiry. *Thales Visionix Inc. v. United States*, 850 F.3d 1343, 1346 (Fed. Cir. 2017). This Court’s analysis can, and should, stop with step one.

C. **Alice Step Two—The Claims of the Patents-in-Suit Amount to Significantly More Than a Patent on an Ineligible Concept.**

Under *Alice* step two, “the question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a **question of fact**,” a question that “must be proven by **clear and convincing evidence**.” *Berkheimer*, 881 F.3d at 1368 (emphasis added). Importantly, step two is not satisfied by simply determining whether the components themselves are conventional or generic, for “an inventive concept can be [] found in the non-conventional and non-generic **arrangement** of known, conventional pieces of computing components.” *Fortinet*, 2021 WL 2412995, \*5 (citing *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016)) (emphasis added). See *Cellspin*, 927 F.3d at 1319 (“claims that use an environment—a computer, a mobile phone, etc.—to do significantly more than simply carry out an abstract idea are patent eligible . . . [i]n particular, they recite a specific, plausibly inventive way of arranging devices and using protocols rather than the general idea of capturing, transferring, and publishing data.”). Moreover, contrary to what Defendants’ arguments seem to suggest, *Alice* step two is an entirely separate exercise from any obviousness determination. *Two-Way Media*, 874 F.3d at 1339–40.

If the court considers the claims at issue under step two, the ultimate answer will be the same: the claims of the Patents-in-Suit are directed to patent eligible subject matter. In analyzing the character of the individual claims Koss has identified specific claim elements that are “non-conventional and non-generic” and furthermore, has shown that the combination of those elements is “non-conventional and non-generic.” For example, the specification of the states the “memory units . . . may store firmware that is executed by the processor unit [and e]xecution of the firmware by the processor unit [] may provide various functionality for the earphone.” ECF No. 71-3 (’934 Patent) at 7:43–546. Thus, this combination of elements (i.e., firmware, stored in the memory of the headphone assembly’s, and the execution of that firmware, by the headphone assembly’s processor) results in numerous, non-conventional and non-generic benefits. See *id.* at 9:14–28, 10:4–35, 10:49–54, 14:2–62, 15:24–34, 15:50–61. The remaining advantages set forth above in Section III(a) further demonstrate how the claims of the Patents-in-Suit arrange specific components, in a specific manner, to provide for an improved headphone assembly.

Moreover, the court must “determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy.” *Cellspin*, 927 F.3d at 1314. Defendants allege “Koss does not plead any factual allegations that the asserted patents recite any inventive concept,” and that Koss’s FAC “states that the claimed invention represents a specific improvement to the art, yet never explains what it is that the claims supposedly improve, let alone how or why.” ECF No. 80 (Motion) at 3, 24 (internal quotes omitted). This is not the case. The FAC pleads and properly identifies the improvements the claimed inventions provide. ECF No. 71 (FAC) at ¶¶63–64, 76–77, 89–90, 102–102, 115–116, 128–129; *see also, e.g.*, ECF No. 71 (FAC) at ¶89 (“’934 Patent also describes and claims how these wireless earphones use the claimed microphone to pick up utterances of a user and how, upon activation of a user-control of the headphone assembly, a request is initiated to a remote server . . . [and] the receipt and storage of firmware upgrades.”); ¶128 (“The ’852 Patent describes and claims a system that includes a mobile computing device with a graphical user interface thereon to allow the user to select an audio control setting for the wireless headphones.”). Therefore, Koss’s pleadings clearly allege the improvements of the claimed headphone assemblies and systems and furthermore, these alleged improvements are grounded in the specifications and file histories of the Patents-in-Suit.

Importantly, Defendants’ Motion is entirely silent with regard to any reason why the Court should find that the claimed invention of the Patents-in-Suit are conventional, thus they have certainly not met their burden of clear and convincing evidence. *Berkheimer*, 881 F.3d at 1368; *see also Align Tech., Inc v. 3Shape A/S*, No. 17-1647-LPS, 2020 WL 5979353, \*2 (D. Del. Oct. 8, 2020) (Denying 3Shape’s motion is at *Alice* step one and determining that at step 2 “it is at least plausible that there is something in the patented invention that might be unconventional, not well-known, or not well-understood . . . [a]t this stage, Align is entitled to all plausible inferences. . . . 3Shape has failed to meet its burden at step 2.”).

Without specifics or support, Defendants simply allege that the “non-abstract” claim limitations of the Patents-in-Suit were “well-understood, routine, conventional activities previously known to the industry.” ECF No. 80 (Motion) at 5. *See Berkheimer*, 881 F.3d at 1368 (explaining that concepts may only be found unpatentable as a matter of law when “there is no genuine issue



of material fact regarding whether the claim element or claimed combination is well-understood, routine, conventional to a skilled artisan in the relevant field”); *see also Contour IP Holding, LLC v. GoPro, Inc.*, No. 3:17-cv-04738-WHO, 2021 WL 4148651, \*8 (N.D. Cal. Sept. 13, 2021) (“GoPro offers no basis to make a similar finding here [that the claim limitations were “well-understood, routine, and conventional”] and Contour’s pleading forecloses it.”). What is “well-understood, routine, and conventional” to a skilled artisan in the relevant field is a question of fact and cannot be disposed of at this stage. Furthermore, Defendants allege that Koss has “not plead any factual allegations that the asserted patents recite any inventive concept.” ECF No. 80 (Motion) at 3. However, this is not the case. Koss has sufficiently alleged facts within its Complaint, FAC, and corresponding attachments, that the claims of the Patents-in-Suit recite an “inventive concept” and the individual claim elements or combination of elements are not “well-understood, routine and conventional” to a skilled artisan in the relevant field. *See also*, Sections III(A)(1)–(6). Defendants, the burden bearing party on this Motion, have submitted no evidence as to this determination, simply legal conclusions and conclusory attorney argument. This is plainly insufficient to meet their clear and convincing burden necessary to establish the Patents-in-Suit are unpatentable under 35 U.S.C. § 101.

**D. Defendants Fail to Consider the Claims in their Totality Rendering the Cited Authority Inapposite**

Defendants rely primarily on four Federal Circuit decisions, claiming they are dispositive of this matter. ECF No. 80 (Motion) at 8. Unsurprisingly given the Defendants’ mischaracterization of the claimed technology, however, these cases are easily distinguished. The cases Defendants have selected generally involve claims that disclose some sort of wireless communication, but fail to disclose specific apparatuses or systems that comprise distinct, physical components that together, recite a specific improvement over the prior art.

In *Chamberlain Grp., Inc. v. Techtronic Indus. Co.*, the Federal Circuit considered apparatus claims directed to “a movable barrier operator.” 935 F.3d 1341, 1345 (Fed. Cir. 2019). The court determined the claims were “directed to wirelessly communicating status information about a system . . . [i.e.,] the wireless status condition data transmitter transmits a status condition



1 signal that: corresponds to a present operational status condition defined, at least in part, by at least  
 2 two operating states.” *Id.* at 1346. The Federal Circuit noted that the “claims merely recite a system  
 3 that communicates status information” and failed to recite “a specific improvement over prior  
 4 systems” or an “improved user interface” which have been found to be patent eligible. *Id.* at 1348.  
 5 As previously described, claims of the Patents-in-Suit **do** recite “a specific improvement over prior  
 6 systems” and/or an “improved user interface,” because they offer the user wireless headphones that  
 7 are physically separate, in-ear type phones, with a rechargeable battery, that are much smaller than  
 8 the wireless headphone proposed at the time. *See, e.g.*, ECF No. 71-3 (’934 Patent) at 1:48–62.

9 In *ChargePoint, Inc. v. SemaConnect, Inc.*, the Federal Circuit analyzed apparatus claims  
 10 reciting a “control device to turn electric supply on and off to enable and disable charge transfer for  
 11 electric vehicles.” 920 F.3d 759, 766 (Fed. Cir. 2019). Under *Alice* step one, the court explained,  
 12 the claim involves “the abstract idea of communicating requests to a remote server and receiving  
 13 communications from that server.” *Id.* Furthermore, “the specification failed to provide any  
 14 technical details for the tangible components.” *Id.* at 767. These findings in conjunction with the  
 15 plain language of the claim, distinguish *ChargePoint* from the claims at issue in this case. The  
 16 specifications of the Patents-in-Suit provide a wealth of technical details for the many tangible  
 17 components disclosed in the claims at issue. *See, e.g.*, ECF No. 71-4 (’325 Patent) at 4:4–17 (the  
 18 hanger bar “allows the earphone to clip to, or hang on, the user’s ear” and this allows a user “to  
 19 position the earphone on the listener’s ear.”); ECF No. 71-1 (’025 Patent) at 14:51–57 (“the  
 20 earphone may comprise a user control, such as button, . . . that, when activated, causes the earphone  
 21 to transmit an electronic request . . . to the host server” that is in wireless communication with the  
 22 mobile, digital audio player.); *see also* Section III(a).

23 In *Affinity Labs of Tex., LLC v. Amazon.com Inc.*, the Federal Circuit considered a system  
 24 claim comprising “a network based media managing system that maintains a library of content . . .  
 25 a collection of instructions . . . operable when executed [by a handheld device]. . . to send a request  
 26 for a streaming delivery of the content.” 838 F.3d 1266, 1267–68 (Fed. Cir. 2016). Unlike the  
 27 headphone assemblies and systems of the Patent-in-Suit, the *Affinity Labs* system lacked a concrete  
 28 device or system and there are no specific structural limitations. The *Affinity Labs* court explained

1 under *Alice* step one, “[a]t that level of generality, the claims do no more than describe a desired  
2 function or outcome, without providing any limiting detail that confines the claim to a particular  
3 solution to an identified problem. The purely functional nature of the claim confirms that it is  
4 directed to an abstract idea, not to a concrete embodiment of that idea.” *Id.* at 1269. Furthermore,  
5 under *Alice* step two, the court in *Affinity Labs* held the “features set forth in the claims are described  
6 and claimed generically rather than with the specificity necessary to show how those components  
7 provide a concrete solution to the problem addressed by the patent.” *Id.* at 1271. Conversely, the  
8 claims of the Patent-in-Suit are directed towards a concrete and limited embodiment of wireless  
9 communication: the claimed headphone assemblies.

10 Lastly, Defendants cite to *Sensormatic Elecs., LLC v. Wyze Labs, Inc.*, as dispositive for  
11 finding the claims of the Patents-in-Suit are directed to patent ineligible subject matter. No. 2020-  
12 2320, 2021 WL 2944838, \*1 (Fed. Cir. Jul. 14, 2021). But again, Defendants’ argument misses  
13 the mark. In *Sensormatic*, the court considered “[a] surveillance system for wireless  
14 communication between components comprising: a base system including at least two wireless  
15 input capture devices (ICDs) . . . having at least one sensor and at least one input component for  
16 detecting and recording inputs, a processor, a memory, a transmitter/receiver . . . in electronic  
17 connection.” *Id.* The Federal Circuit highlighted important points that contributed to a finding of  
18 ineligibility, including “Sensormatic fail[ed] to identify any particular nonabstract configuration”  
19 of the ICDs, that the “concept of encoding or decoding image data is [itself] abstract,” and that  
20 “prioritization of ICD input data through detection of trigger events is an aspect of the abstract idea  
21 of remote surveillance.” *Id.* at \*3. Unlike *Sensormatic*, the claims of the Patents-in-Suit clearly  
22 identify particular non-abstract physical configurations, and do not involve abstract concepts or  
23 events that amount “wireless communication” as Defendants allege. For example, when the  
24 earphone and the data source (claimed in the ’155 Patent) are “out of range” (i.e., “when the  
25 received signals degrade below the threshold minimum signal strength level”), both the earphones  
26 and the data source themselves, “may transition automatically to communicate over an  
27 infrastructure wireless network (such as a wireless LAN 15 (WLAN)) [] that is in the range of both  
28 the earphone [] and the data source,” ECF No. 71-2 (’155 Patent) at 5:9–16, Fig. 2B. This

1 functional enhancement offers important benefits to the user and amounts to an “inventive concept”  
2 and a significant improvement over other headphone assemblies in the prior art. As with the  
3 preceding three cases, *Sensormatic* is not determinative of the claims of the Patents-in-Suit.

4 **IV. CONCLUSION**

5 For the reasons discussed above, Koss respectfully request that this Court deny Defendant’s  
6 Rule 12(b)(6) Motion to Dismiss.

7  
8  
9 Dated: November 15, 2021

/s/ Peter E. Soskin

Peter E. Soskin (SBN 280347)

Erik J. Halverson (SBN 333492)

Benjamin E. Weed (admitted *pro hac vice*)

Philip A. Kunz (admitted *pro hac vice*)

Darlene F. Ghavimi (admitted *pro hac vice*)

James A. Shimota (admitted *pro hac vice*)

Gina E. Johnson (admitted *pro hac vice*)

Amanda C. Maxfield (admitted *pro hac vice*)

14  
15 **ATTORNEYS FOR PLAINTIFF**  
16 **KOSS CORPORATION**